GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Fiscal Note 2009 Biennium

Bill #	SB0558	**Title:**	Establishing the Montana Electric and Gas Authority
Primary Sponsor:	Lind, Greg	**Status:**	As Introduced

- ☐ Significant Local Gov Impact
- ☑ Needs to be included in HB 2
- ☑ Technical Concerns
- ☐ Included in the Executive Budget
- ☑ Significant Long-Term Impacts
- ☐ Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2008 Difference	FY 2009 Difference	FY 2010 Difference	FY 2011 Difference
Expenditures:				
General Fund	$567,159	$554,560	$568,424	$582,635
Revenue:				
General Fund	$0	$0	$0	$0
Net Impact-General Fund Balance	($567,159)	($554,560)	($568,424)	($582,635)

Description of Fiscal Impact:

SB 558 establishes the five member Montana Electric and Gas Authority (the Authority), which is administratively attached to the Department of Commerce; establishes and authorizes the election of members; clarifies Public Service Commission authorities; requires the Public Service Commission to approve the Authority's acquisition of a public utility; and provides the Authority with rulemaking authority and broad but certain powers to exercise the provisions contained in the bill. SB 558 also allows the Authority to issue revenue bonds and classifies Authority property as class nine property for property tax purposes; provides that certain Authority facilities are subject to the privilege tax; requires the Authority to annually submit financial reports; and requires that the Authority repay state appropriations; amends sections and provides for an immediate effective date and a termination date.

There could be significant fiscal impact to the Department of Administration's Architecture & Engineering Division as the bill is currently drafted. The unknown number of facilities the state would own and their current condition, future improvements, etc. make it impracticable to determine the extent of the impacts at this time.

FISCAL ANALYSIS

Assumptions:

Department of Commerce (DOC)

1. SB 558 establishes and administratively attaches the five member Montana Electric and Gas Authority (the Authority) to the Department of Commerce for the broad purposes enumerated in Sections 5, 6, and 8 of the bill. The Authority would be established in the Department of Commerce as a separate division and the Authority would be located in Butte, Montana as mandated in Section 5 of the bill.
2. General powers of authority are described in detail in Section 5 of the bill. The Authority may sue and be sued, employ officers, agents, and employees it considers necessary, purchase, receive, lease, or acquire real or personal property within or outside the state, borrow money, and issue bonds, notes, or other obligations among other items.
3. Authority powers related to electric and natural gas generation, transmission, and distribution facilities are described in detail in Section 6 of the bill. The Authority may acquire, construct, improve, rehabilitate, maintain, and operate electrical generation facilities, transmission and distribution facilities, storage facilities, and related facilities necessary to maintain an adequate, reliable, efficient, and economic supply of natural gas and electricity within the service area, including acquiring ownership of fuel supplies and electrical generation facilities that are located within or outside the state among other items.
4. Section 7 of the bill states that the Public Service Commission (PSC) shall regulate the rates, services, and practices related to electricity or natural gas generation and transmission and distribution facilities owned or operated by the Authority. Furthermore, the Authority may not acquire the assets or stock of a public utility or acquire or construct electrical generation facilities without prior approval of the PSC and the PSC may not approve the Authority's acquisition of assets or stock of a public utility unless the PSC finds that the Authority's acquisition of the public utility will not increase electricity or natural gas rates above what those rates would be under current public utility ownership.
5. The Authority may, by resolution, issue negotiable notes and bonds as described in detail in Section 8 of the bill. Negotiable notes and bond proceeds may be used by the Authority to acquire any real or personal property or facilities that the Authority considers necessary; prepay the purchase of electricity, natural gas, and other fuel and transmission costs; pay interest on bonds or notes of the Authority for which the interest may be variable or fixed and may accrue without regard to any state usury laws; establish reserves to secure its bonds and notes; and establish or maintain other funds or accounts for the purpose or purposes that the Authority considers necessary or desirable in implementing the provisions of the bill among other items.
6. Section 21 requires the Authority, beginning on January 1, 2008, to annually submit a detailed financial report verified by the presiding officer of the Authority to the Governor, State Treasurer, President of the Senate, and Speaker of the House.
7. Section 22 requires that an appropriation made by the legislature in connection with planning, study, feasibility analysis, regulatory approval, closing, or any other related costs in connection with the acquisition of the stock or assets of a public utility must be treated as an advance to the Authority, and the Authority shall repay the appropriation, without interest and at times and under conditions mutually agreed upon by the Authority and state, upon completion of the acquisition of the stock or assets of a public utility either out of the proceeds of bonds issued by the Authority or by delivery of non-interest-bearing bonds of the Authority to the state or out of excess revenue of the Authority except if an acquisition of a public utility is not completed by December 31, 2017.
8. SB 558 has an immediate effective date contained in Section 29 of the bill and a contingent termination date of December 31, 2017 contained in Section 30 of the bill.
9. For the purposes of this fiscal note it is assumed the Authority would immediately require 3.00 FTE to address the duties and responsibilities mandated in the bill. 1.00 FTE would be required to serve as the

Administrator for the Authority; 1.00 FTE would be required to serve as a project manager for the Authority, and 1.00 FTE would be required for administrative support. For the 3.00 new FTE and board member expenses the estimated costs for FY 2008 are $198,385 and $198,822 for FY 2009. FY 2010 and FY 2011 costs are inflated 2.5% annually.

10. Operating expenses which include contracted services for legal assistance, consulting for bond and financial purposes, and energy related consulting services are estimated to be $368,774 in FY 2008 and $355,738 in FY 2009. FY 2010 and FY 2011 costs are inflated 2.5% annually.
11. For the purposes of this fiscal note it is assumed that the general fund appropriations contained in this fiscal note would be repaid as required in Section 22 of the bill before December 31, 2017 and after June 30, 2011.
12. The Department of Commerce cannot quantify the potential revenue and expenditure impacts or benefits to the state beyond what is estimated in this fiscal note.

	FY 2008 Difference	FY 2009 Difference	FY 2010 Difference	FY 2011 Difference
Fiscal Impact:				
Department of Commerce				
FTE	3.00	3.00	3.00	3.00
Expenditures:				
Personal Services	$198,385	$198,822	$203,793	$208,887
Operating Expenses	$368,774	$355,738	$364,631	$373,748
TOTAL Expenditures	$567,159	$554,560	$568,424	$582,635
Funding of Expenditures:				
General Fund (01)	$567,159	$554,560	$568,424	$582,635
TOTAL Funding of Exp.	$567,159	$554,560	$568,424	$582,635
Revenues:				
General Fund (01)	$0	$0	$0	$0
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	($567,159)	($554,560)	($568,424)	($582,635)

Long-Range Impacts:

The Department of Commerce cannot quantify the potential revenue and expenditure impacts or benefits to the state beyond what is estimated in this fiscal note because it is difficult to predict the actions the Authority might take given the broad powers authorized in the bill.

Technical Notes:

1. In 2004, the Wyoming Legislature passed SF0052 which established the Wyoming Infrastructure Authority. First year funding for the Wyoming Infrastructure Authority was $250,000 from the general fund in the form of a loan. The Wyoming program has subsequently evolved into an agency with a 2008 biennium budget of over $6.623 million.
2. This bill does not address the taxation of electric generation facilities that might be acquired by the Montana Electric and Gas Authority. Large generation facilities owned or used by public utilities are taxed as Class 13 property under 15-6-156, MCA, or as Class 14 (wind generation) property under 15-6-

157, MCA. Small non-fossil electric generation facilities are taxed as Class 4 property under 15-6-134, MCA, and Class 8 property under 15-6-138, MCA, with a possible five-year exemption from taxation under 15-6-225, MCA. These statutes might need amendments to clarify the situation.

3. As the definition of building in 18-2-101, MCA, includes "a building, facility, or structure," all construction work (whether new, renovation, rehabilitation, repair, maintenance, etc.) would be governed by Title 18, Chapters 1, 2, and 8. This would indicate all construction for the Authority would involve the Dept. of Administration whether it was for towers (structure), generation facilities (facility), or for buildings.
4. The bill is unclear with regard to whether or not the authorization to acquire, construct, rehabilitate, etc. must also have the expenditure of funding authorized on a project-by-project basis through the Long Range Building Program (Title 17) in order to receive approval for the use of revenues which are assumed to be classified as State Special Revenue.
5. The bill allows for ownership of facilities outside of the state. It is not identified as to how construction, repair, rehabilitation, etc. of these facilities is to be accomplished.
6. There would be expected a significant impact to the Architecture & Engineering Division as the bill is currently drafted. The unknown number of facilities the state would own and their current condition, future improvements, etc. make it impracticable to determine the extent of the impacts at this time.

Sponsor's Initials	*Date*	*Budget Director's Initials*	*Date*